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10/581,505

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Gemma Louise Wood

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS

PO BOX 3001

BRIARCLIFF MANOR, NY 10510-8001

EXAMINER

WASAFF, JOHN SAMUEL

ART UNIT

PAPER NUMBER

3742

MAIL DATE

DELIVERY MODE

10/04/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|------------------------------------|--|
| Office Action Summary | Application No. 10/581,505 | Applicant(s) WOOD ET AL. | |
| | Examiner JOHN WASAFF | Art Unit 3742 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 August 2008 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. **The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided.** The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

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The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 2-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claim 2 recites the limitation "the lower wall" in lines 4 and 5. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Cai (US PGPub. No. 20030096038).
6. In claim 1, Cai shows a beverage making device (FIG. 9 shows a brew station) comprising a brewing chamber (chamber 149) for enclosing a pad (cartridge 10) containing a substance from which the beverage is to be brewed (flavor-containing materials 12b), which brewing chamber is formed by an upper part (press plate 79) with one or more openings (press

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plate 79 has a plurality of openings; para. [0038]) for supplying water to the brewing chamber and by a lower part (protrusions 121) with an outflow opening (opening 125) through which the brewed beverage can leave the brewing chamber, while beverage receiving means are present below the lower part (chamber 120), characterized by one or more further openings between the brewing chamber and the beverage receiving means (orifice 123), and by means for closing the one or more further openings during the brewing process (para. [0040]).

7. In claim 2, Cai shows the one or more further openings can be closed in that a portion of the lower part is pushed downward, the portion comprising at least a part of the lower wall of the brewing chamber, preferably the central part of the lower wall of the brewing chamber (in normal operation, pressure exerted by press plate 79 results in downward movement of chamber 149).

8. In claim 3, Cai shows that the portion of the lower part is pushed downward by the pad present in the brewing chamber (cartridge 10 acts on lower part of chamber 149 when press plate 79 exerts pressure).

9. In claim 4, Cai shows the device comprises means for increasing the supply of heated water to the brewing chamber to a higher level than is required during brewing of a beverage by means of a pad in the brewing chamber (water introduced under pressure into expandable chamber 138 via inlet 137, which causes drainage valve 136 to close, i.e., water level higher before brewing; para. [0040]).

10. In claim 5, Cai teaches the further openings are formed as nozzles for creating liquid jets in a direction inclined with respect to the vertical direction (orifice 123 shaped to create liquid jet; Fig. 9).

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11. In claim 6, Cai shows the lower part comprises an additional chamber located underneath the brewing chamber (chamber 120) such that the further openings connect the additional chamber with the beverage receiving means (orifice 123 directs beverage to chamber 120; para. [0040]), and the connection between the brewing chamber and the additional chamber can be closed during the brewing process (para. [0040]).

12. In claim 7, Cai shows the central part of the lower wall of the brewing chamber can move in vertical direction (via pressure from press plate 79), such that an annular opening between the brewing chamber and the additional chamber is present around the central part in the upper position thereof, and in the lower position the annular opening is closed (i.e., as pressure increases, lower part of chamber 149 pushed down to open/close orifice 123).

13. In claim 8, Cai shows the beverage receiving means comprise a foam chamber for creating foam in the beverage, the further openings being formed as nozzles for directing liquid jets to different parts of the wall of the foam chamber (drink from cartridge injected as a high-speed drink jet into a pool of drink accumulated in chamber 120 of the holder and causes crema to be formed in the drink, i.e., drink from cartridge enters a foam chamber; para. [0040]).

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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15. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

16. Claims 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cai in view of De Longhi (WO 02/091889).

17. Cai teaches all the features as set forth above, but fails to teach the device cleaning itself or one or more further openings are closed during the brewing process and are opened during a cleaning process.

18. De Longhi teaches a self-cleaning device that comprises a disk element having at its centre a passage for housing a valve for closing the passage, between the valve and the disk element being foreseen an outlet hole for the drink (p. 13, ln. 1-4).

19. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Cai to include the features of De Longhi. The motivation is for a self-cleaning process that removes any residual materials from the brewing process.

20. Claims 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cai.

21. Cai teaches all the features as set forth above, including a substance soluble in water is present in the beverage receiving means in order to brew the beverage (e.g., crema/cream; para. [0040]), but fails to teach no pad is present in the brewing chamber.

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22. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to remove the cartridge in Cai so that a different-tasting beverage may be produced in the beverage receiving means.

Conclusion

23. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: USPN 5638740; 3975996; 3793933; 6536332 B2; 5402707; 6119582.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN WASAFF whose telephone number is (571)270-1283. The examiner can normally be reached on Monday through Friday, 7:30am to 5:00pm, alternating Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on (571)272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JOHN WASAFF/
Examiner, Art Unit 3742
09/24/10

/TU B HOANG/
Supervisory Patent Examiner, Art Unit 3742